MALAYSIAN REPORTS

[The two Supreme Court judgments reported in this issue were first reported in the original Bahasa Malaysia — see *Draman bin Kassim* lwn *Pentadbir Tanah Daerah, Hulu Terengganu* [1990] 3 MLJ 284 and *Pentadbir Tanah Daerah Gombak* lwn *Huat Heng (Lim Low & Sons) Sdn Bhd* [1990] 3 MLJ 282. The English translations were done by the MLJ and are not, therefore, official translations. We hope, however, that they will prove useful to English-speaking readers. The MLJ will continue to provide English translations of Supreme Court judgments written in Bahasa Malaysia in the future.]

Land Administrator, District of Gombak v Huat Heng (Lim Low & Sons) Sdn Bhd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 01-13-1990
HASHIM YEOP A SANI CJ (MALAYA), HARUN HASHIM AND MOHAMED YUSOFF SCJJ
12 SEPTEMBER 1990

Land Law — Land acquisition — Condition imposed when application for change of use was granted — Land for road widening project — Market value cannot be claimed — Land Acquisition Act 1960, First Schedule s 1

The appellant appealed against the decision of the High Court ordering compensation to be paid for land acquired by the government. The land was acquired for a project of broadening a highway. The owner of the land had earlier applied for change of condition from agriculture to building. This was approved subject to a condition that the owner should surrender any land that is to be used for a public purpose as indicated in the site plan. After the land was acquired the owner claimed compensation and this was granted by the learned judge of the High Court. The appellant appealed.

Held, allowing the appeal:
The owner should not be allowed to deny the condition which he had agreed to, that is to surrender the land as indicated on the plan for a public purpose, and he cannot claim the market value for the land.

Legislation referred to
Land Acquisition Act 1960 First Schedule s 1

Appeal from: Civil Application No A15-12-87 (High Court, Kuala Lumpur)

Mohd Hishamuddin bin Mohd Yunus (State Legal Advisor, Selangor) for the appellant.
Harpal Singh for the respondent.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): The Land Administrator, District of Gombak, has appealed to this court against the order of compensation made by the judge of the High Court in Kuala Lumpur in connection with the acquisition of land lot no 2191, grant 26386 (old grant no 7488), measuring 0.417 acres in the mukim of Batu, District of Gombak, State of Selangor Darul Ehsan. The purpose of the acquisition of the said land is for the project for the widening of the Kepong-Selayang Pandang Highway.

The acquisition had been declared under s 8 of the Land Acquisition Act 1960 in the Government Gazette of the State of Selangor No 1774 dated 31 July 1986. Thus the date of valuation is at 31 July 1986 in accordance with the provisions of the said Act. The said land is located at 14½ mile, Jalan Kuala Lumpur — Rawang.

In his grounds of judgment the judge agreed with the submissions of the applicant, ie the proprietor of the land, and awarded compensation in the sum of $20 per sq ft as applied for. The judge rejected the submissions of the legal adviser of the state of Selangor who referred to the condition which had been agreed by the proprietor of the land. The judge said as follows:

> Viewed from the legal aspect, does it mean that, if a piece of land has been reserved for use as a road, the government is absolved from paying any compensation? I cannot see how the Collector of Land Revenue should be absolved from any compensation notwithstanding there is surrender within the meaning of s 195 [of the National Land Code 1965].
> [Translated from Bahasa Malaysia.]

According to the background of the said land it was purchased from Syarikat Selangor Development by an agreement in the year 1980 at the price of $569,250. At that time the said land was for agricultural use. Nevertheless, after the transfer had been completed in the year 1983, the present proprietor of the land applied to the government of the State of Selangor for change of condition of the said land. The application for change of condition was approved by the Majlis Mesyuarat Kerajaan Negeri Selangor [Selangor State Executive Council] on 24 January 1985. In this connection, the respondent, ie the proprietor of the land, had been informed about the approval for the change of condition of the said land on 26 April 1985 through a letter from the District Land Office, Gombak. This letter notified the respondent that the approval for the application for change of condition was subject to several express conditions, including the condition for the payment of additional premium. One of the conditions imposed reads as follows:

> (XV111) The proprietor is requested to surrender to the Government the lands which will be used for public purposes as indicated in the site plan.
> [Translated from Bahasa Malaysia.]

One site plan was prepared by the respondent and the plan had been approved by all the departments concerned, viz the Department of Town and Country Planning, the Department of Public Works, the Department of Drainage and Irrigation, the Department of Water Supply, and the Department of Health, Gombak. According to the said plan the portion acquired is reserved for public road widening.

Having regard to the background of the said land, it is clear that the express condition imposed had been accepted by the proprietor of the land, which had made all the payments which were required for the said approval. Having regard to all these facts the Land Administrator, District of Gombak, had issued an order for the value of compensation as recommended by the Selangor Valuation Department, ie $10 be awarded as nominal compensation to the proprietor of the land.

The submission of counsel for the respondent is that because acquisition had been made under the Land Acquisition Act 1960, compensation must be made in accordance with the market value. Based on this submission, the judge had agreed to award the compensation as stated above.

We are of the opinion that the judge of the High Court has failed to apply the true principle of compensation. The relevant principle concerning compensation is well settled, that is the compensation awarded should as far as practicable place the claimant in the same financial position as he would have been in had there been no acquisition of the land. This principle is stated in the text book *Compulsory Acquisition and Compensation* by Sir Frederick Corfield QC and RJA Carnwath at p 161 as follows:

> The basic principle of the law of compensation is that the sum awarded should as far as practicable place the claimant in the same financial position as he would have been in had there been no question of his land being compulsorily acquired. [Original text.]

Applying the above principle to the present case we are of the opinion that it is not proper for the proprietor of the land to submit that it must be awarded compensation according to the market value. It is clear to us that the proprietor of the land must not be allowed to deny the express condition which it had accepted when receiving the approval for the change of condition of the said land. It is clear that the approval permits the said land to be used for light industrial buildings in accordance with the site plan as certified by the Director of Town and Country Planning, state of Selangor. The site plan prepared by the respondent itself had also been approved by the said department and the relevant government departments and agencies and the plan had also been registered on 11 December 1985 as plan no JPBK/B11/98/85/PD. The land acquired is reserved land in the said plan in accordance with the condition as stated above.

The meaning of 'market value' under s 1 of the First Schedule to the 1960 Act is inapplicable to the said land in view of the facts of this case, ie the date of declaration of the acquisition (31 July 1986) is after the date of the imposition of the condition (26 April 1985) and the date when the approved plan was registered (11 December 1985).

We are of the opinion that the High Court judge had erred when he accepted the denial of the condition by the proprietor of the land.

Accordingly this appeal is allowed and we restore the order of the Land Administrator, District of Gombak.

Costs of the appeal and costs in the High Court will be paid by the respondent.

Appeal allowed.

Solicitors: *AJ Ariffin, Chong & Harpal.*

Judgment translated by *Wong Kim Fatt*

Draman bin Kassim v Land Administrator, District of Hulu Terengganu

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 01-5-1989
HASHIM YEOP A SANI CJ (MALAYA), HARUN HASHIM AND JERMURI SERJAN SCJJ
28 AUGUST 1990

Land Law — Land acquisition — Compensation — Comparison with other lands — Interest — Costs — Land Acquisition Act 1960, ss 8, 48 & 51

This was an appeal against the decision of the High Court in Kuala Terengganu in regard to the compensation payable for land required by the government. The effective date of the acquisition of the land was 29 January 1981. The government had paid compensation of $4,800 per acre to the appellant. In the High Court, it was held that the compensation should be increased to $7,000 per acre. The appellant in his appeal stated:

(a) that he was not satisfied with the reason given by the High Court in rejecting the comparison with the value of lots 8 and 454 in the same district, which had been sold for a higher value;
(b) that the learned judge had failed to use his discretion to award interest;
(c) that the appellant was not satisfied in being asked to pay the costs of the assessors.

The learned trial judge had rejected the comparison with the two lots as he held that they were not comparable.

Held, allowing the appeal in part:

(1) Having considered all the circumstances of the case, the court held that there was no reason to interfere with the award of compensation of $7,000 per acre given by the High Court and therefore the appeal in regard to the compensation was dismissed.

(2) The learned judge did not exercise his discretion to award interest and therefore the appeal in this aspect should be allowed and an order made for the payment of interest at the rate of 6% from the date of acquisition to 19 January and 8% from 20 January till the date of payment.